Choong Boon Song v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO J-05–59 OF 2011
MOHD HISHAMUDIN, JEFFREY TAN AND BALIA YUSOF JJCA
17 APRIL 2012

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Evidence — Presumption — Drug trafficking — Rule against double presumption — Drugs found by police in house rented by accused — No direct or inferential evidence to show accused knew about drugs — Whether presumption of knowledge under s 37(d) of the Dangerous Drugs Act 1952 could be invoked — Whether wrong to thereafter invoke further presumption of trafficking under s 37(da) — Whether evidence showed accused 'kept or stored' drugs at rented house to amount to trafficking

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The appellant was charged in the High Court with committing 11 drug offences, two of which were for trafficking in 79.64g of 3.4 methylenedioxymethamphetamine and 80.9g heroin under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act') while the remaining nine charges were for possession of drugs under s 12(2) of the Act. A police party found the drugs which were the subject-matter of six of the possession charges when they raided an apartment ('the Polo house') where they found the appellant alone. During the raid the police found a house key and an electricity bill pertaining to a different address ('the Jalan Lembing house') and in the name of another person. The police party then raided the Jalan Lembing house where they found more drugs which were the subject-matter of the two trafficking charges and the remaining three charges of possession. Both the premises which were raided were rented by the appellant. The appellant had told the trial court that the Polo house was occupied not only by him but also his Thai wife and another tenant ('Tan'), both of whom had keys to the premises. He also contended the drugs at the Polo house were found in the room occupied by Tan. With regard to the Jalan Lembing house, the appellant claimed he rented the house on Tan's behalf and denied having any keys to that house. He also denied knowledge of the drugs that were found there. The High Court rejected the defence's story as a mere denial and afterthought and convicted the appellant on all the charges, sentencing him to death on the trafficking charges and to 10 years' jail and 10 strokes of the rotan on each of the nine possession charges. The trial judge pointed out that no personal belongings of anyone else were found at the Polo house to suggest it was occupied by anyone other than the appellant. The judge

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A held that mens rea possession of the drugs had been proved against the appellant. He also held the appellant's 'keeping and storing' of the drugs at the Jalan Lembing house were activities that amounted to trafficking under s 2 of the Act. The appellant appealed to the Court of Appeal against conviction and sentence in respect of all the charges.

B

Held:

(1) There was not an iota of evidence to indicate the appellant knew about the drugs found in the Jalan Lembing house and neither were there any surrounding circumstances which permitted the inference of such knowledge on his part (see para).

C

(2) The appellant could, at most, be presumed to have knowledge of the drugs in the Jalan Lembing house by invoking the presumption under s 37(d) of the Act. And it had to stop there. To go further and deem the appellant to be trafficking by invoking the next presumption under s 37(da) of the Act was flouting the principle against double presumption. The conviction for trafficking was wrong in law (see para 23–24).

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(3) There was not a shred of evidence to suggest the appellant kept or stored the impugned drugs at the Jalan Lembing house. The only connection between him and the Jalan Lembing house was that he had rented it. This was insufficient to convict him for the offence charged (see para 26).

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(4) There was no reason to interfere with the trial judge's finding and the conviction and sentence with regard to the possession charges concerning the drugs found in the Jalan Lembing house (see para 27).

(5) With regard to the drugs found at the Polo house, there was evidence to support the inference of knowledge from the appellant's conduct. There was no reason to interfere with the trial judge's finding in that regard (see para 28).

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[Bahasa Malaysia summary

H Perayu dituduh di Mahkamah Tinggi kerana melakukan 11 kesalahan berkaitan dadah, yang mana dua daripadanya adalah terhadap pengedaran 79.64g 3.4 methylenedioxymethamphetamine dan 80.9g heroin di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB') sementara baki sembilan pertuduhan adalah terhadap milikan dadah di bawah s 12(2) ADB. Pasukan polis menemui dadah tersebut yang merupakan perkara subjek enam

I pertuduhan milikan apabila mereka menyerbu sebuah pangsapuri ('rumah Polo') di mana mereka mendapati perayu berseorangan. Semasa serbuan

tersebut pihak polis menemui kunci rumah dan bil elektrik berkaitan dengan alamat yang berbeza ('rumah Jalan Lembing') dan atas nama seorang yang lain. Pasukan polis kemudian menyerbu rumah Jalan Lembing di mana mereka menemui lebih banyak dadah yang merupakan perkara subjek dua pertuduhan pengedaran tersebut dan tiga lagi pertuduhan milikan. Kedua-dua kediaman tersebut yang diserbu disewa oleh perayu. Perayu memberitahu mahkamah perbicaraan bahawa rumah Polo dihuni bukan sahaja olehnya seorang tetapi juga isterinya berbangsa Thai dan seorang lagi penyewa ('Tan'), kedua-duanya mempunyai kunci kediaman tersebut. Berkaitan dengan rumah Jalan Lembing, perayu menyatakan bahawa dia menyewa rumah tersebut bagi pihak Tan dan menafikan mempunyai kunci rumah tersebut. Dia juga menafikan pengetahuan mengenai dadah yang didapati di sana. Mahkamah Tinggi menolak cerita pembelaan sebagai penafian semata-mata dan fikiran semula dan mensabitkan perayu atas kesemua pertuduhan, menjatuhkan hukuman mati atas pertuduhan-pertuduhan pengedaran dan 10 tahun penjara dan 10 kali sebatan rotan bagi setiap satu daripada sembilan pertuduhan bagi milikan. Hakim perbicaraan menyatakan bahawa tidak ada barangan peribadi milik orang lain yang ditemui di rumah Polo untuk menandakan bahawa ia didiami oleh orang lain selain daripada perayu. Hakim juga menyatakan bahawa mens rea milikan dadah-dadah tersebut telah dibuktikan terhadap perayu. Dia juga menyatakan bahawa 'keeping and storing' dadah-dadah tersebut oleh perayu di rumah Jalan Lembing adalah aktiviti-aktiviti yang membawa maksud pengedaran di bawah s 2 ADB. Perayu merayu kepada Mahkamah Rayuan terhadap sabitan dan hukuman berkaitan dengan kesemua pertuduhan.

Diputuskan:

(1) Tiada keterangan untuk menunjukkan bahawa perayu mengetahui tentang dadah-dadah yang dijumpai di rumah Jalan Lembing dan juga tidak wujud hal keadaan sekeliling yang membenarkan inferens pengetahuan pada pihaknya (lihat perenggan 23).

(2) Perayu boleh, paling mungkin, dianggap mempunyai pengetahuan mengenai dadah-dadah di rumah Jalan Lembing dengan membangkitkan anggapan di bawah s 37(d) ADB. Dan ia harus dihentikan setakat itu. Untuk melanjutkannya lagi dan menganggap perayu mengedar dengan membangkitkan anggapan seterusnya di bawah s 37(da) ADB adalah bercanggah dengan prinsip yang bertentangan dengan anggapan berganda. Sabitan bagi pengedaran adalah salah di sisi undang-undang (lihat perenggan 23–34).

(3) Tidak ada keterangan untuk menyarankan bahawa perayu menyimpan dadah-dadah yang dipersoalkan di rumah Jalan Lembing. Satu-satunya kaitan di antara perayu dan rumah Jalan Lembing adalah bahawa dia menyewa rumah tersebut. Ini tidak mencukupi untuk mensabitkannya dengan kesalahan yang dipertuduh (lihat perenggan 26).

(4) Tidak ada alasan untuk campur tangan dengan penemuan hakim perbicaraan dan sabitan dan hukuman berkaitan dengan pertuduhan milikan dadah yang ditemui di rumah Jalan Lembing (lihat perenggan 27).

(5) Berkaitan dengan dadah-dadah yang ditemui di rumah Polo, terdapat keterangan untuk menyokong inferens pengetahuan daripada tindakan perayu. Tidak ada alasan untuk campur tangan dengan penemuan hakim bicara berkaitan perkara tersebut (lihat perenggan 28).]

Notes

For cases on drug trafficking, see 7(2) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 2333–2348.

Cases referred to

Chan Pean Leon v PP [1956] 1 MLJ 237; (1956) 1 LNS 17 (refd)

Mohamad Yatim bin Abu Bakar v PP [1950] 1 MLJ 57 (refd)

Mohamad Radhi bin Yaacob v PP [1991] 3 MLJ 169; [1991] 1 CLJ 311 (Rep), SC (refd)

Muhammed bin Hassan v PP [1998] 2 MLJ 273; [1998] 2 CLJ 170, FC (refd)

PP v Yuvaraj [1969] 2 MLJ 89, PC (refd)

Legislation referred to

Criminal Procedure Code ss 182A, 288

Dangerous Drugs Act 1952 ss 2, 12, 12(2), 37(d), 37(da), 39A(2), 39B(1)(a), 39B(2)

Appeal from: Criminal Trial 45A–28 of 2010 (High Court, Johor Bahru)

KL Chee (KL Chee & Co) for the appellant.

Najib Zakaria (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Balia Yusof JCA (delivering judgment of the court):

[1] Chong Boon Song, the appellant in this case was charged with 11 drug offences. Of these, two were for the charge of trafficking in dangerous drugs, namely 79.64g of 3.4 methyle nedioxymethamphetamine and 80.9g of heroin under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act'). The nine other charges relate to offences under s 12(2) of the Act. He was found guilty on all these charges. He was sentenced to death for the offences of trafficking under s 39B(2) and to various terms of imprisonment in respect of the other nine

charges. This appeal is in respect of those convictions.

THE PROSECUTION'S CASE

[2] A team of police officers from Bukit Aman Narcotic Division headed by Assistant Superintendent of Police Balasubramaniam s/o Rajoo ('PW8') raided an apartment located at Unit 13–1L, Polo Park, Jalan Bentara Luar, Taman Polo, Johor Bahru ('the Polo house') at approximately 9.00pm on 12 August 2008. On arrival, PW8 knocked on the door to the house and the appellant opened the door. PW8 identified himself as a police officer by showing his authority card to the appellant. PW8 and his officers entered the premises and conducted a search.

[3] As a result of the search of the master bedroom, the police team recovered an assortment of drugs. PW8 also recovered an electricity bill under the name of 'Masari bin Hashim' bearing the address of No 17, Jalan Lembing 3, Taman Sri Tebrau, Johor Bahru ('the Jalan Lembing house') and a house key on the table at the guest area of the premises. The police team thereafter proceeded to the said address together with the appellant. There they conducted a search and again various types of drugs were recovered.

[4] The drugs found in the master bedroom of the Polo house were in a box on a dressing table. The drugs in the Jalan Lembing house were also found in the same manner. Drugs were also found in a cabinet in one of the rooms of the Jalan Lembing house. Besides the drugs, small plastic packets, aluminum foils, two weighing machines and two sealing equipments were also found (marked as exhs P32—P37, respectively). A total of 12 mobile phones (exhs P39A—L) were also seized from the said premises.

[5] The drugs were sent to the Chemist Department for analysis and were confirmed by the chemists, PW3 and PW4 to be scheduled drugs under the Act. These drugs are the subject matter of the charges against the appellant.

[6] As part of the prosecution's case, an estate agent, PW6 was called who testified that the Polo house was rented out to a man using an NRIC in the name of 'Lau Wei Li'. The appellant was identified as the said man named 'Lau Wei Li'.

[7] For the Jalan Lembing house, another estate agent, PW7, also gave evidence to the effect that she rented out the said premises to a man also by the name of 'Lau Wei Li' whom PW7 identified as the appellant.

[8] The real Mr Lau Wei Li ('PW5') testified that on 6 August 2006 he was

robbed in front of his house. During the said robbery, his wallet containing his personal belongings including his NRIC was robbed. PW5 said in evidence that he never rented any house in Johor Bahru and does not know anything about the Polo house or the Jalan Lembing house.

[9] At the end of the prosecution's case, the learned trial judge found that a prima facie case has been established against the appellant and called for his defence.

THE DEFENCE CASE

[10] In his defence, the appellant gave evidence on oath stating that he was married to a Thai national by the name of Hui Zhen in 2007 and stayed with her at the Polo house. During the police raid, Hui Zhen has gone out. The other room in the said house was occupied by his friend, Tan Choon Lai, who, at the time of the police raid was also out. Both Hui Zhen and Tan Choon Lai have their own keys to the said house. According to the appellant he rented the house from an estate agent using somebody else's name because he has a criminal case in Singapore. The appellant denied that the drugs were found in his room. The appellant said that they were found in the room of Tan Choon Lai, who according to the appellant had a pet dog that was found to be missing a day after the police raid.

[11] As to what had transpired at the Jalan Lembing house, the appellant said that the police gained access to the house by cutting the padlock, and that he did not see the police searching the premises. He had helped Tan Choon Lai to rent the Jalan Lembing house from an estate agent, as Tan Choon Lai was away in Thailand. The appellant denied having any key to the Jalan Lembing house and does not know to whom the drugs found in the premises belong to.

[12] A friend of the appellant by the name of Chen Fook Onn ('DW2') testified as a defence witness. DW2 said that the appellant whom he called 'Ah Boy' stayed with his wife Hui Zhen in one of the rooms at the Polo house while the appellant's friend whom he knew as 'Ah Lai' stayed in the other room. DW2 used to come to the Polo house to play mahjong and to drink. DW2 did not know Ah Lai's full name. On 13 August 2008, that is, a day after the police had raided the Polo house, at about 7.30am he was at Taman Sentosa, Johor Bahru where Hui Zhen requested him to send her to her house at Polo Park (the Polo house), to which duly he obliged. He saw Hui Zhen going into the Polo house by opening the grille door using a key. About 15 minutes later, Hui Zhen came back with some clothings and a dog and went back to Taman Sentosa. Before leaving, Hui Zhen gave him a bunch of two keys which was produced as

exh D48. According to DW2, one of the keys was used to open the grille door. DW2 was unsure whether Ah Lai had rented another house but he knew Ah Lai had a girlfriend in Taman Seri Tebrau.

[13] At the end of the defence case, the learned trial judge found the defence had failed to cast a reasonable doubt on the prosecution's case. The learned judge found that the appellant's and DW2's evidence were unconvincing and could not be believed. It was a mere denial and an afterthought. The learned judge also found the appellant lying when the latter said that the police gained access to the Jalan Lembing house by cutting the padlock, when photographs P6 I and J showed that the padlock was still intact. The appellant was found guilty and convicted.

[14] For the first two charges of trafficking, which carry the mandatory sentence of death, the appellant was sentenced to death; while on the other nine charges of possession, he was sentenced to ten years imprisonment with ten strokes of the rotan for each charge. The imprisonment terms were ordered to run concurrently from the date of the appellant's arrest on 12 August 2008.

[15] Against the said convictions and sentences, the appellant is now appealing before us.

THE APPEAL

[16] At the outset we feel impelled to remark that it is our observation that some legal practitioners take the trouble to put up very lengthy petitions of appeal, and in some cases the petitions even contain up to 50 or 60 paragraphs/grounds. In the instant case, we have before us 55 grounds, thus giving us the impression that, from the appellant's standpoint, learned trial judge had not done anything right at all! We think this is an unhealthy practice, be that as it may, we, however, note that learned counsel has put up a written submission which in our view is more realistic and direct to the point.

[17] Having heard the appeal we had allowed the appellant's appeal in respect of the two charges of trafficking, and we accordingly substituted it with a conviction under s 39A(2) of the Act. However, we dismissed the appeal against the conviction and sentence in respect of the other nine charges for possession.

[18] We now give our reasons.

[19] The two charges of trafficking in dangerous drugs, namely, 79.64g of 3.4 methylenedioxymethamphetamine (MDMA) and 80.09g of heroin were in respect of the drugs found at the Jalan Lembing house. The raiding party's suspicion was aroused with the finding of an electricity bill (exh P28) in the name of Masari bin Hashim bearing the Jalan Lembing house address. This electricity bill was found lying on a table with a key (exh P38) in the guest area of the Polo house. This led the police to the Jalan Lembing house where an assortment of drugs were found. Both PW8 and PW10 (Asp Mohd Hurrizatul Fikri) testified that there were signs that the house was inhabited. There were three bedrooms in the house. PW7, the estate agent, confirmed that the appellant was the person who rented the house. PW10 (the invstigating officer) went to the house on 13 August 2008 and 19 August 2008 to take photographs and prepare a sketch plan. PW10 testified that he recovered a short sleeved shirt, orange in colour from the house. According to PW10 on testing the shirt, it fitted the appellant.

[20] With this evidence, the learned trial judge concluded as follows:

> Daripada fakta-fakta tersebut mahkamah ini boleh membuat kesimpulan yang munasabah bahawa tertuduh mempunyai jagaan dan kawalan ke atas Rumah Jalan Lembing dan dadah-dadah berbahaya yang ditemui.

[21] The learned judge went further and made the following finding:

> Dalam kes ini saya berpuas hati setelah membuat penilaian secara maksima keterangan saksi-saksi pihak pendakwaan, mendapati pihak pendakwaan telah berjaya membuktikan satu kes prima facie terhadap tertuduh atas semua pertuduhan. Melalui saksi-saksi pendakwaan tertuduh telah dibuktikan mempunyai milikan ke atas dadah-dadah berbahaya yang menjadi hal perkara asas dalam semua pertuduhan. Tertuduh juga mempunyai pengetahuan mens rea terhadap dadah-dadah tersebut. Oleh kerana berat dadah-dadah yang terlibat dalam pertuduhan pertama (pindaan) dan pertuduhan kedua melebihi berat minima yang diperuntukkan di bawah s 37(da)(vi) Akta, maka anggapan pengedaran (trafficking adalah terpakai (lihat kes *Muhammed bin Hassan v Public Prosecutor* [1998] 2 MLJ 273; [1982] 2 CLJ 170). Selain itu, keadaan dadah-dadah dalam dua pertuduhan tersebut serta lain-lain dadah berbahaya yang ditemui di dua premis yang diserbu turut menunjukkan bahawa tertuduh terlibat dalam aktiviti pengedaran dadah-dadah berbahaya yang dirampas. Perbuatan menyimpan (*keeping*) dan penyetoran (*storing*) termasuk dalam definasi pengedaran di bawah s 2 Akta. Oleh yang demikian tertuduh diperintahkan untuk membela diri atas semua pertuduhan yang dihadapkan kepada beliau.

[22] It is a basic principle that in order to have possession of a thing one has to have knowledge of the thing that one is alleged to possess. As stated by Thomson J in *Chan Pean Leon v Public Prosecutor* [1956] 1 MLJ 237; [1956] 1 LNS 17 'there can be no possession without knowledge and knowledge cannot

be proved by direct evidence, it can only be proved by inference from the surrounding circumstances. Again the possible variety of circumstances which will support such an inference is infinite. There may be something in the accused's behaviour that shows knowledge, or the nature of the thing may be so obvious that it is possible to say 'he must have known what it was' or, again in cases under the Dangerous Drugs Ordinance, there may be a statutory presumption which fills a gap in the evidence'.

[23] Having perused the entire judgment of the learned trial judge, we have not been able to find the ingredient of 'possession' as one understands it in criminal law. Before the learned trial judge could invoke the presumption of trafficking under s 37(da) of the Act there must be an affirmative finding of possession. With the evidence adduced by the prosecution, as what we have narrated in the preceding paragraphs, we are of the view that there is not an iota of evidence to indicate the appellant's knowledge about the drugs found in the Jalan Lembing house and neither can we find any surrounding circumstances which may permit the learned trial judge to infer knowledge on the part of the appellant. It is true that the learned trial judge has found 'tertuduh telah dibuktikan mempunyai milikan ke atas dadah-dadah berbahaya yang menjadi hak perkara asas dalam semua pertuduhan' and 'tertuduh juga mempunyai pengetahuan mens rea terhadap dadah-dadah tersebut'. But what is the evidence to support such findings?

[24] Having considered the totality of the evidence, we are of the considered view that at most, the appellant can be presumed to have knowledge of the drugs in the said premises by invoking the presumption under s 37(d) of the Act. And it has to stop there. To go further and hold the appellant be deemed to be trafficking by invoking the next presumption under s 37(da) of the Act would be flouting the principle against double presumption (see *Muhammed bin Hassan v Public Prosecutor* [1998] 2 MLJ 273; [1998] 2 CLJ 170).

[25] For the aforesaid reason we are of the view that the conviction of the appellant for the offence of trafficking under the Act in respect of the first and second charges is wrong in law and the appellant's appeal is hereby allowed. The conviction under s 39B(2) of the Act in respect of the first and second charges is therefore, set aside and we hereby substitute it with a conviction under s 39A(2) of the same.

[26] We further note that the learned trial judge also found that the act of keeping and storing the drugs in the said premises is trafficking within the meaning of s 2 of the Act. And as such the appellant is trafficking in dangerous drugs. We disagree. Again we find that there is not a shred of evidence to suggest that the appellant kept or stored the impugned drugs there. The only

connection between the appellant and the Jalan Lembing house is that he rented it from PW7. This, in our view, is not sufficient to convict the appellant for the offence he was charged.

[27] In respect of the conviction of the appellant on the other charges for possession of the impugned drugs found in the Jalan Lembing house, we see no reason to interfere with the finding and decision of the learned trial judge. Accordingly, the conviction and sentence in respect of the third, fourth and fifth charges are affirmed.

DRUGS IN THE POLO HOUSE

[28] In respect of the drugs found at the Polo house, learned counsel for the appellant submitted that the learned trial judge has erred in law in finding that the prosecution has proved a prima facie case of possession under s 12 of the Act. It is submitted that the prosecution has failed to prove that the appellant has exclusive possession over the drugs found in the house as there is the possibility that a third party may have access to the same.

[29] In finding that a prima facie case has been established by the prosecution against the appellant on the six charges of possession of the various types of drugs found at the Polo house, we find it necessary to reproduce what the learned trial judge has said in his grounds of judgment:

> Keterangan SP8 diterima oleh mahkamah ini. Beliau seorang saksi yang berkredibel dan boleh dipercayai. Keterangan beliau tidak goyah semasa disoal-balas. Keterangan SP8 disokong dalam hala perkara yang matan oleh keterangan Detektif Sub-Inspektor Yusoff bin Ishak (SP9) Keterangan SP8 kepada mahkamah ini jelas menunjukkan bahawa beliau membuat serbuan ke rumah Pangsapuri Polo setelah menerima maklumat mengenai aktiviti pengedaran dadah dilakukan di pangsapuri tersebut. Semasa serbuan dilakukan, tertuduh berada seorang diri di pangsapuri tersebut. Tiada orang lain ditemui di pangsapuri itu dan tiada apa-apa dokumen pengenalan diri serta harta milik peribadi orang lain dijumpai di dalam pangsapuri tersebut. Tiada pakaian wanita atau pakaian orang lain ditemui dalam pangsapuri tersebut. Dakwaan peguambela bahawa teman wanita tertuduh yang bernama Hui Zhen turut tinggal di pangsapuri tersebut juga tidak benar. Penama Tan Choon Lai yang dikatakan turut tinggal dipangsapuri tersebut juga tidak benar. Pakaian yang ditemui dalam pangsapuri tersebut telah diacupakai kepada tertuduh dan didapati pakaian tersebut sesuai dan berpadanan dengan badan tertuduh. Oleh itu mahkamah ini mendapati tiada keraguan bahawa tertuduh berada seorang diri dalam Pangsapuri Polo tersebut pada waktu serbuan dilakukan. Selain itu turut dibuktikan oleh saksi pendakwaan bahawa tertuduh seorang diri telah menyewa Pangsapuri Polo tersebut.

[30] And at a later part of the grounds of judgment, the learned judge

inferred knowledge on the part of the appellant relating to the drugs found in the said premises. In the words of the learned judge:

> Keterangan SP8 mengenai kelakuan tertuduh sewaktu barang kes dadah ditemui dalam bilik tidur utama di mana pakaian tertuduh turut ditemui boleh diterima di bawah s 8 Akta Keterangan. SP8 menyatakan mengenai kelakuan tertuduh itu seperti berikut, iaitu 'Masa barang kes ditemui OKT menjadi takut dan bimbang. Saya dapati daripada rawak muka dia'. Kelakuan tertuduh menjadi takut dan bimbang setelah dadah ditemui boleh secara munasabahnya mahkamah ini membuat inferen bahawa tertuduh mempunyai pengetahuan salah terhadap barang-barang kes dadah tersebut (lihat *Public Prosecutor v Ouseng Sama-Ae* [2008] 1 CLJ 337; *Lee Kwan Woh v Public Prosecutor* [2008] 3 MLJ 674; [2008] 4 CLJ 133 dan *Surentheran a/l Selvaraja v Public Prosecutor* [2006] 1 MLJ 641; [2005] 2 CLJ 264).

[31] We do not see anything inherently wrong with the above finding. At the risk of repeating ourselves, knowledge is always and can only be proved by inference from the surrounding circumstances. There is evidence to support the inference of knowledge from the conduct of the appellant in this case, as made by the learned trial judge in the above quoted passage of his judgment. We find no reason as to justify us to interfere with his finding.

[32] On the defence evidence, it was the contention of the appellant's learned counsel that the learned trial judge has erred in holding that the defence has failed to cast a reasonable doubt on the prosecution's case. Learned counsel submitted that the existence of Hui Zhen and Tan Choon Lai as brought up by the defence, and the evidence of DW2 regarding these two named persons and the production of the bunch of keys marked as exh D48 should be sufficient grounds to create a reasonable doubt on the prosecution's case.

[33] Our perusal of the learned trial judge's written judgment leaves us in no doubt that the correct approach in dealing with the issue and procedure of assessing the evidence as provided under s 182A of the Criminal Procedure Code has been adopted. The learned trial judge's reference to the oft quoted cases of *Mohamad Radhi bin Yaacob v Public Prosecutor* [1991] 3 MLJ 169; [1991] 1 CLJ 311 (Rep), *Public Prosecutor v Yuvaraj* [1969] 2 MLJ 89 and *Mohamad Yatim bin Abu Bakar v Public Prosecutor* [1950] MLJ 57 gives a correct statement of the law on this issue. Although the learned trial judge may have stated it very briefly, the following part of the judgment which we now quote is the learned judge's analysis of the defence evidence. It states as follows:

> Selepas meneliti keseluruhan keterangan di hadapan mahkamah ini, saya mendapati pihak pembelaan telah gagal untuk menimbulkan sebarang keraguan yang munasabah terhadap kebenaran kes pihak pendakwaan. Keterangan tertuduh dan keterangan daripada saksi SD2 bukan sahaja tidak menyakinkan, tidak boleh dipercayai dan tidak menimbulkan apa-apa keraguan yang munasabah terhadap kes

A pihak pendakwaan. Pembelaan tertuduh hanyalah satu penafian yang kosong semata-mata dan bersifat satu pemikiran terkemudian (*afterthought*). Tidak munasabah cerita tertuduh beliau menyewa Rumah Jalan Lembing untuk dan bagi pihak Tan Choon Lan. Tidak munasabah juga Tan Choon Lan tinggal di Pangsapuri Polo sedangkan tiada bukti-bukti menunjukkan fakta ini. Sebaliknya terdapat keterangan kukuh bahawa Tan Choon Lan sebenarnya tinggal di Taman Seri Tebrau. Penama tersebut juga turut ditangkap di sana pada hari yang sama tertuduh ditangkap.

Tertuduh jelas berbohong apabila beliau menyatakan pihak polis telah memotong dua buah mangga yang terdapat di Rumah Jalan Lembing sedangkan gambar-gambar P6 I dan J dengan jelas menunjukkan mangga-mangga tersebut masih dalam keadaan baik. Dalam soal-balas tertuduh turut bersetuju mangga-mangga tersebut tidak putus dan tidak terpotong.

[34] We note that the name Tan Choon Lan referred to by the learned trial judge in the above passage must be read as Tan Choon Lai. We believe there is a spelling error here.

[35] With respect, we are unable to agree with learned counsel contention that the learned trial judge has erred in failing to consider the defence evidence and in failing to hold that the defence has created a reasonable doubt on the prosecution's case. It is the duty of the trial judge to assess the testimony of the witnesses and to decide whether to accept or to reject and to give due weight to the evidence. The trial judge had the audio visual advantage of assessing the witnesses and we must not interfere with his findings unless we find sufficient justification to do so. The appellant's objection on this ground must fail. The appellant's appeal against the conviction and sentence in respect of the six charges for possession of dangerous drugs at the Polo house is hereby dismissed.

[36] In substituting for the offence of trafficking on the first and second charges with an offence of possession punishable under s 39A(2) of the Dangerous Drugs Act 1952, we have considered the appellant's plea in mitigation and the submissions in reply by the learned deputy public prosecutor. Accordingly, we imposed a sentence of 18 years imprisonment and a sentence of whipping with ten strokes of the rotan for each of the two charges of trafficking. We also ordered the sentence of imprisonment to run concurrently with the sentences on the other nine charges which we have affirmed earlier.

[37] We wish to add that, in compliance with s 288 of the Criminal Procedure Code, the total number strokes of whipping to be inflicted on the appellant should only be limited to 24 strokes.

Order accordingly.

Reported by Asok Kumar